

SB0067



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0067

Introduced 1/11/2017, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

New Act

Creates the Collaborative Process Act. Defines terms. Provides that the Act applies to collaborative process participation agreements that meet the requirements of the Act signed on or after the effective date of the Act. Contains provisions concerning: requirements of collaborative process participation agreements; the beginning and conclusion of the collaborative process; proceedings before the court; disclosure of information; standards of professional responsibility and mandatory reporting; confidentiality; and privileges. Provides that the Act is subject to the supervisory authority of the Illinois Supreme Court.

LRB100 00354 HEP 10358 b

A BILL FOR

1 AN ACT concerning alternative dispute resolution.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Collaborative Process Act.

6 Section 5. Definitions. In this Act:

7 (1) "Collaborative process communication" means a
8 statement, whether oral or in a record, or verbal or nonverbal,
9 that:

10 (A) is made to conduct, participate in, continue, or
11 reconvene a collaborative process; and

12 (B) occurs after the parties sign a collaborative
13 process participation agreement and before the
14 collaborative process is concluded.

15 (2) "Collaborative process participation agreement" means
16 a written agreement by persons acting with informed consent to
17 participate in a collaborative process, in which the persons
18 agree to discharge their collaborative process lawyer and law
19 firm if the collaborative process fails.

20 (3) "Collaborative process" means a procedure intended to
21 resolve a collaborative process matter without intervention by
22 a court in which persons:

23 (A) sign a collaborative process participation

1 agreement; and

2 (B) are represented by collaborative process lawyers.

3 (4) "Collaborative process lawyer" means a lawyer who
4 represents a party in a collaborative process and helps carry
5 out the process of the agreement, but is not a party to the
6 agreement.

7 (5) "Collaborative process matter" means a dispute,
8 transaction, claim, problem, or issue for resolution,
9 including a dispute, claim, or issue in a proceeding, which is
10 described in a collaborative process participation agreement
11 and arises under the family or domestic relations law of this
12 State, including:

13 (A) marriage, divorce, dissolution, annulment, legal
14 separation, and property distribution;

15 (B) significant decision making and parenting time of
16 children;

17 (C) maintenance and child support;

18 (D) adoption;

19 (E) parentage; and

20 (F) premarital, marital, and post-marital agreements.

21 (6) "Law firm" means:

22 (A) lawyers who practice law together in a partnership,
23 professional corporation, sole proprietorship, limited
24 liability company, or association; and

25 (B) lawyers employed in a legal services organization,
26 law school or the legal department of a corporation or

1 other organization.

2 (7) "Nonparty participant" means a person, other than a
3 party and the party's collaborative process lawyer, that
4 participates in a collaborative process.

5 (8) "Party" means a person other than a collaborative
6 process lawyer that signs a collaborative process
7 participation agreement and whose consent is necessary to
8 resolve a collaborative process matter.

9 (9) "Person" means an individual, corporation, business
10 trust, estate, trust, partnership, limited liability company,
11 association, joint venture, public corporation, government or
12 governmental subdivision, agency, or instrumentality, or any
13 other legal or commercial entity.

14 (10) "Proceeding" means a judicial or other adjudicative
15 process before a court, including related prehearing and
16 post-hearing motions, conferences, and discovery.

17 (11) "Prospective party" means a person that discusses with
18 a prospective collaborative process lawyer the possibility of
19 signing a collaborative process participation agreement.

20 (12) "Record" means information that is inscribed on a
21 tangible medium or that is stored in an electronic or other
22 medium and is retrievable in perceivable form.

23 (13) "Related to a collaborative process matter" means
24 involving the same parties, transaction or occurrence, nucleus
25 of operative fact, dispute, claim, or issue as the
26 collaborative process matter.

1 (14) "Sign" means, with present intent to authenticate or
2 adopt a record:

3 (A) to execute or adopt a tangible symbol; or

4 (B) to attach to or logically associate with the record
5 an electronic symbol, sound, or process.

6 Section 10. Applicability. This Act applies to a
7 collaborative process participation agreement that meets the
8 requirements of Section 15 signed on or after the effective
9 date of this Act.

10 Section 15. Collaborative process participation agreement;
11 requirements.

12 (a) A collaborative process participation agreement must:

13 (1) be in a record;

14 (2) be signed by the parties;

15 (3) state the parties' intention to resolve a
16 collaborative process matter through a collaborative
17 process under this Act;

18 (4) state the parties' agreement to discharge their
19 collaborative process lawyers and law firms if the
20 collaborative process fails.

21 (5) describe the nature and scope of the matter;

22 (6) identify the collaborative process lawyer who
23 represents each party in the process; and

24 (7) contain a statement by each collaborative process

1 lawyer confirming the lawyer's representation of a party in
2 the collaborative process.

3 (b) Parties may agree to include in a collaborative process
4 participation agreement additional provisions not inconsistent
5 with this Act.

6 Section 20. Beginning and concluding the collaborative
7 process.

8 (a) A collaborative process begins when the parties sign a
9 collaborative process participation agreement.

10 (b) A court may not order a party to participate in a
11 collaborative process over that party's objection.

12 (c) A collaborative process is concluded by:

13 (1) resolution of a collaborative process matter as
14 evidenced by a signed record of the parties;

15 (2) resolution of a part of the collaborative process
16 matter, evidenced by a signed record of the parties, in
17 which the parties agree that the remaining parts of the
18 matter will not be resolved in the process; or

19 (3) termination of the process.

20 (d) A collaborative process terminates:

21 (1) when a party gives notice to other parties in a
22 record that the process is ended;

23 (2) when a party:

24 (A) begins a proceeding related to a collaborative
25 process matter without the agreement of all parties; or

- 1 (B) in a pending proceeding related to the matter:
- 2 (i) initiates a pleading, motion, order to
- 3 show cause, or request for a conference with the
- 4 court;
- 5 (ii) requests that the proceeding be put on the
- 6 court's active calendar; or
- 7 (iii) takes similar action requiring notice to
- 8 be sent to the parties; or
- 9 (3) except as otherwise provided by subsection (g),
- 10 when a party discharges a collaborative process lawyer or a
- 11 collaborative process lawyer withdraws from further
- 12 representation of a party.
- 13 (e) A party's collaborative process lawyer shall give
- 14 prompt notice to all other parties in a record of a discharge
- 15 or withdrawal.
- 16 (f) A party may terminate a collaborative process with or
- 17 without cause.
- 18 (g) A collaborative process continues, despite the
- 19 discharge or withdrawal of a collaborative process lawyer, if
- 20 not later than 30 days after the date that the notice of the
- 21 discharge or withdrawal of a collaborative process lawyer
- 22 required by subsection (e) is sent to the parties:
- 23 (1) the unrepresented party engages a successor
- 24 collaborative process lawyer; and
- 25 (2) in a signed record:
- 26 (A) the parties consent to continue the process by

1 reaffirming the collaborative process participation
2 agreement;

3 (B) the agreement is amended to identify the
4 successor collaborative process lawyer; and

5 (C) the successor collaborative process lawyer
6 confirms the lawyer's representation of a party in the
7 collaborative process.

8 (h) A collaborative process does not conclude if, with the
9 consent of the parties, a party requests a court to approve a
10 resolution of the collaborative process matter or any part
11 thereof as evidenced by a signed record.

12 (i) A collaborative process participation agreement may
13 provide additional methods of concluding a collaborative
14 process.

15 Section 25. Proceedings pending before a court; status
16 report.

17 (a) Persons in a proceeding pending before a court may sign
18 a collaborative process participation agreement to seek to
19 resolve a collaborative process matter related to the
20 proceeding. The parties shall file promptly with the court a
21 notice of the agreement after it is signed. Subject to
22 subsection (c) and Sections 30 and 35, the filing operates as
23 an application for a stay of the proceeding.

24 (b) The parties shall file promptly with the court notice
25 in a record when a collaborative process concludes. The stay of

1 the proceeding, if granted, under subsection (a) is lifted when
2 the notice is filed. The notice may not specify any reason for
3 termination of the process.

4 (c) A court in which a proceeding is stayed under
5 subsection (a) may require the parties and collaborative
6 process lawyers to provide a status report on the collaborative
7 process and the proceeding. A status report may include only
8 information on: (i) whether the process is ongoing or
9 concluded; or (ii) the anticipated duration of the
10 collaborative process.

11 (d) A court may not consider a communication made in
12 violation of subsection (c).

13 (e) A court shall provide parties notice and an opportunity
14 to be heard before dismissing a proceeding in which a notice of
15 collaborative process is filed based on delay or failure to
16 prosecute.

17 Section 30. Emergency order. Nothing in the collaborative
18 process may prohibit a party from seeking an emergency order to
19 protect the health, safety, welfare, or interest of a party or
20 person identified as protected in Section 201 of the Illinois
21 Domestic Violence Act of 1986.

22 Section 35. Approval of agreement by the court. A court may
23 approve an agreement resulting from a collaborative process. An
24 agreement resulting from the collaborative process shall be

1 presented to the court for approval if the agreement is to be
2 enforceable.

3 Section 40. Disclosure of information. Voluntary informal
4 disclosure of information related to a matter is a defining
5 characteristic of the collaborative process. Except as
6 provided by law other than this Act, during the collaborative
7 process, on the request of another party, a party shall make
8 timely, full, candid, and informal disclosure of information
9 related to the collaborative process matter without formal
10 discovery. A party also shall update promptly previously
11 disclosed information that has materially changed. The parties
12 may define the scope of disclosure during the collaborative
13 process.

14 Section 45. Standards of professional responsibility and
15 mandatory reporting not affected. This Act does not affect:

16 (1) the professional responsibility obligations and
17 standards applicable to a lawyer or other licensed
18 professional; or

19 (2) the obligation of a person to report abuse or
20 neglect, abandonment, or exploitation of a child or adult
21 under the law of this State.

22 Section 50. Confidentiality of collaborative process
23 communication. A collaborative process communication is

1 confidential to the extent agreed by the parties in a signed
2 record or as provided by law of this State other than this Act.

3 Section 55. Privilege against disclosure for collaborative
4 process communication; admissibility; discovery.

5 (a) Subject to Sections 60 and 65, a collaborative process
6 communication is privileged under subsection (b), is not
7 subject to discovery, and is not admissible in evidence.

8 (b) In a proceeding, the following privileges apply:

9 (1) A party may refuse to disclose, and may prevent any
10 other person from disclosing, a collaborative process
11 communication.

12 (2) A nonparty participant may refuse to disclose, and
13 may prevent any other person from disclosing, a
14 collaborative process communication of the nonparty
15 participant.

16 (c) Evidence or information that is otherwise admissible or
17 subject to discovery does not become inadmissible or protected
18 from discovery solely because of its disclosure or use in a
19 collaborative process.

20 Section 60. Waiver and preclusion of privilege.

21 (a) A privilege under Section 55 may be waived in a record
22 or orally during a proceeding if it is expressly waived by all
23 parties and, in the case of the privilege of a nonparty
24 participant, it is also expressly waived by the nonparty

1 participant.

2 (b) A person that makes a disclosure or representation
3 about a collaborative process communication which prejudices
4 another person in a proceeding may not assert a privilege under
5 Section 55, but this preclusion applies only to the extent
6 necessary for the person prejudiced to respond to the
7 disclosure or representation.

8 Section 65. Limits of privilege.

9 (a) There is no privilege under Section 55 for a
10 collaborative process communication that is:

11 (1) available to the public under the Freedom of
12 Information Act or made during a session of a collaborative
13 process that is open, or is required by law to be open, to
14 the public;

15 (2) a threat or statement of a plan to inflict bodily
16 injury or commit a crime of violence as defined in Section
17 1-10 of the Alcoholism and Other Drug Abuse and Dependency
18 Act;

19 (3) intentionally used to plan a crime, commit or
20 attempt to commit a crime, or conceal an ongoing crime or
21 ongoing criminal activity; or

22 (4) in an agreement resulting from the collaborative
23 process, evidenced by a record signed by all parties to the
24 agreement.

25 (b) The privileges under Section 55 for a collaborative

1 process communication do not apply to the extent that a
2 communication is:

3 (1) sought or offered to prove or disprove a claim or
4 complaint of professional misconduct or malpractice
5 arising from or related to a collaborative process; or

6 (2) sought or offered to prove or disprove abuse,
7 neglect, abandonment, or exploitation of a child or adult,
8 unless a child protective services agency or adult
9 protective services agency is a party to or otherwise
10 participates in the process.

11 (c) There is no privilege under Section 55 if a court
12 finds, after a hearing in camera, that the party seeking
13 discovery or the proponent of the evidence has shown the
14 evidence is not otherwise available, the need for the evidence
15 substantially outweighs the interest in protecting
16 confidentiality, and the collaborative process communication
17 is sought or offered in:

18 (1) a court proceeding involving a felony or
19 misdemeanor; or

20 (2) a proceeding seeking rescission or reformation of a
21 contract arising out of the collaborative process or in
22 which a defense to avoid liability on the contract is
23 asserted.

24 (d) If a collaborative process communication is subject to
25 an exception under subsection (b) or (c), only the part of the
26 communication necessary for the application of the exception

1 may be disclosed or admitted.

2 (e) Disclosure or admission of evidence excepted from the
3 privilege under subsection (b) or (c) does not make the
4 evidence or any other collaborative process communication
5 discoverable or admissible for any other purpose.

6 (f) The privileges under Section 55 do not apply if the
7 parties agree in advance in a signed record, or if a record of
8 a proceeding reflects agreement by the parties, that all or
9 part of a collaborative process is not privileged. This
10 subsection does not apply to a collaborative process
11 communication made by a person that did not receive actual
12 notice of the agreement before the communication was made.

13 Section 70. Authority of the Illinois Supreme Court. This
14 Act is subject to the supervisory authority of the Illinois
15 Supreme Court.